87-390

No.

Supreme Court, U.S.
FILED
SEP 4 1987
JOSEPH F. SPANIOL, JR.
CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1987

In re Julia McCain Lampkin Asam, Ph.D., J.D.,
Petitioner and/or Appellant

APPEAL AND/OR PETITION
FOR A WRIT FOR MANDAMUS FROM THE
U.S. COURT OF APPEALS, ELEVENTH CIRCUIT

JURISDICTIONAL STATEMENT

AND/OR PETITION

Julia McCain Lampkin Asam, Ph.D., J.D.
P.O. Box 1022
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QUESTIONS PRESENTED

I. Whether the constitutional issue involv- the outer limits (Alabama Rules of Civil Procedure, Rule 4.2 a(2)(I) of the federal due process clause of the Fifth Amendment to the U.S. Constitution was misinterpreted by the Honorable Judge of the federal district court in Alabama (U.S. District Court for the Northern District of Alabama, Western Division) in a Diversity of Citizenship case involving the Standard of Sullivan (New York Times Co. v. Sullivan 273 Ala. 656, 144 So. 2d 25 (1962), rev'd on other grounds, 376 U.S. 254 (1964), doctrine as to the extension of Alabama's long arm jurisdiction (Alabama Rules of the Court, Rule 4.2 is the Alabama long arm statute) to the outer limits of due process when the Honorable federal judge transferred the instant underlying case (now 87-6-CIV F.M. 17 (b) in U.S. District Court, Middle District of Florida, Fort Myers Division) for alleged lack of in personam

QUESTIONS PRESENTED (CONTINUED)

QUESTION ONE (CONTINUED)

jurisdiction? (See Alabama Rules of Civil Procedure, 4.2 a (2)I).

Sub-Issues Under Question One

(a) Whether Defendant, Robert J. Shapiro, in the underlying case, in which he was an attorney in a 42 U.S.C. §1983 action with pendent libel, made minimum. contacts with the state of Alabama to allow the federal court (U.S. District Court for the Northern District of Alabama, Western Division) to have in personam jurisdiction (contracts, correspondence, telephone calls (see Statement of the Facts in Brief, and the Alabama Rules of Civil Procedure, 4.2 a(2)(I)?

(b) Whether the cause of action (malpractice action in diversity of citizenship case --instant underlying case now 87-6-CIV F.M. 17 (b) in the U.S. District Court for the Middle District of Florida, Fort Myers Division) arose out of the minimum contact of

QUESTIONS PRESENTED (CONTINUED)

QUESTION ONE (CONTINUED)

Sub-Issues Under Question One

correspondence from the Defendant Shapiro to Dr. Asam, and by the Defendant Shapiro demanding $5000 unearned money or he would withdraw from the case within 48 hours before Defendant Shapiro withdrew as attorney and said minimum contact would justify that it would be fair and reasonable to justify in personam jurisdiction? See Alabama Rules of Civil Procedure 4.2 a(2)I).

QUESTION TWO

II. Whether the case should be treated like an appeal in the Supreme Court of the United States since the U.S. Court of Appeals, 11th Circuit, erred in denying the Writ for Mandamus, 87-7252, i.e. the U.S. Court of Appeals, Eleventh Circuit, by denying the Writ for Mandamus 87-7252, the U.S.Court of Appeals, Eleventh Circuit, held the Alabama long arm statute to be invalid and repugnant

QUESTIONS PRESENTED (CONTINUED)

QUESTION TWO (CONTINUED)

to U.S. Constitution, Fifth Amendment due process when in fact and law (see Argument in Brief) in personam jurisdiction was not lacking in the U.S. District Court, Northern District of Alabama, Western Division, since the underlying case now 87-6-CIV F.M. 17 (b) should NOT have been transferred to Florida for lack of in personam jurisdiction?

Sub-Issues Under Question Two

(a) Whether the instant underlying case should be transferred back to the federal court in Alabama (U.S. District Court for the Northern District of Alabama) because in personam jurisdiction is shown and it would be fair and reasonable to have the Defendant, Robert J. Shapiro, to come into the state of Alabama in the federal court, particularly since this is a malpractice action in a diversity of citizenship case and the said attorney, Robert J. Shapiro, defendant, is practicing in the same federal court in

QUESTION PRESENTED (CONTINUED)

QUESTION TWO (CONTINUED)

Sub-Issues Under Question Two

which the case was transferred and bias has clearly been shown (see previous case filed in the Supreme Court of the United States with U.S. Court of Appeals, 11th Circuit, number 87-3184 [docket number of Supreme Court of the United States is not known at the time of writing this brief].

(b) Whether a change of venue can be made because federal courts in Alabama have in personam jurisdiction and because of bias demonstrated by the federal court in Florida (see U.S. Court of Appeals, 11th Circuit case 87-3184 now on appeal in the Supreme Court of the United States), i.e. to have the underlying case which arose in Montgomery, Alabama, to be transferred back to Alabama to the U.S.

QUESTIONS PRESENTED (CONTINUED)

QUESTION TWO (CONTINUED)

Sub-Issues Under Question One

District Court, Middle District of Alabama, in Montgomery, where the instant malpractice action arose by Defendant, Robert J. Shapiro, demanding $5000 by letter or he would withdraw within 48 hours since the return receipt showed that the timing was 48 hours before Defendant, Mr. Shapiro, withdrew as attorney? --therefore, a minimum contact was made under Alabama Rules of Civil Procedure, Rules 4.2 a(2)(I), because Rule 4.2 is Alabama's long arm statute.

PARTIES BELOW

All parties below are parties to this petition.

The plaintiff/petitioner and/or appellant is Julia McCain Lampkin Asam.

The defendants/ respondents are Hon. Sam C. Pointer, U.S. District Judge, U.S. District Judge, Northern District of Alabama, Western Division, U.S. Courthouse, Birmingham, Alabama 35203; Clerk, U.S. District Court, Northern District of Alabama, U.S. Courthouse, Birmingham, Alabama 35203; Clerk U.S. District Court, Middle District of Florida, U.S. Courthouse, Tampa, Florida 33602; Clerk, U.S. Court of Appeals, Eleventh Circuit, 56 Forsyth St., N.W., Atlanta, Georgia, 30303; Mr. John D. Shofi, Attorney, Marlow, Shofi, et al., 2907 Bay to Bay Blvd. Ste. 201, The Bayshore Buildings, Tampa, Florida 33629 and Mr. Robert J. Shapiro, 13822 Cherry Creek Dr., Tampa, Florida 33618.

TABLE OF CONTENTS

	Page
Questions Presented	i
Parties Below	vii
Tables of Contents	viii
Table of Citations	xi
Statement Regarding Oral Argument ..	xiv
Opinions Below	3
Jurisdiction	4
Constitutional Provisions Involved..	
Amendment V	5
Rules Involved	
Federal	
Federal Rules of Civil Procedure	
Rule 4(e)	6
State	
Alabama Rules of Civil Procedure	
4.2(b)	7
4.2 a (2)(I)	7
Statement of the Case	7
Argument and Reasons for Granting	
the Appeal or Writ	15
I. The constitutional issue involving	
the outer limits of the federal due	
process of the Fifth Amendment to	15

TABLE OF CONTENTS (CONTINUED)

	Page
the U.S. Constitution was misinterpreted by the Hon. Judge Sam C. Pointer in a diversity of citizenship case involving the Standard of Sullivan doctrine as to the extension of the Alabama's long arm jurisdiction to the outer limits of due process when the Honorable federal judge transferred the instant underlying case for alleged lack of in personam jurisdiction.	15
(a) Defendant, Robert J. Shapiro, in the underlying case, in which he was an attorney in a 42 U.S.C. §1983 action with pendent libel, made minimum contacts through correspondence, telephone calls and retainer contract with the state of Alabama to allow federal court (U.S. District Court, Northern District of Alabama) to have in personam jurisdiction.	17

TABLE OF CONTENTS (CONTINUED) Page

(b) The malpractice action arose out of the minimum contact of correspondence from the Defendant Shapiro to Dr. Asam in Montgomery, Alabama and by the Defendant Shapiro demanding $5000 unearned money or he would withdraw from the case within 48 hours, and said minimum contact was a breach of contract and would justify in personam jurisdiction. 20

II. The case should be treated like an appeal since appeal from order of judgment of the U.S. Court of Appeals, 11th Circuit denying Writ of Mandamus 87-7252, i.e. the U.S. Court of Appeals, Eleventh Circuit, by denying the Writ for Mandamus 87-7252, the U.S. Court of Appeals, Eleventh Circuit, held the Alabama long arm statute to be invalid and 24

TABLE OF CONTENTS (CONTINUED) Page

repugnant to the U.S. Constitution, Fifth Amendment due process when in fact and law in personam jurisdiction was not lacking in the U.S. District Court, Northern District of Alabama, Western Division, since the underlying case now 87-6-CIV F.M. 17 (b) should NOT have been transferred to federal court in Florida for lack of in personan jurisdiction. 24

(a) The instant underlying case should be transferred back to the federal court in Alabama, U.S. District Court, Northern District of Alabama, Western Division or U.S. district Court, Middle District of Alabama in Montgomery, because in personam jurisdiction is shown and 26

TABLE OF CONTENTS (CONTINUED) Page

it would be fair and reasonable to have the Defendant, Robert J. Shapiro to come into the state of Alabama, particularly since this is a malpractice action under a diversity of citizenship claim and the said attorney, Robert J. Shapiro is practicing in the same federal court in which the case was transferred and BIAS has clearly been shown. 26

(b) A change of venue can be made because federal courts in Alabama have in personam jurisdiction and because of bias demontstrated by the federal court in Florida. 28

Conclusion 29

Certificate of Service

Appendix (Index to Appendix in front of Appendix).

TABLE OF CITATIONS

Cases Cited: Page

Arrowsmith v. United Press International, 320 F. 2d 219, 223 (2d Cir. 1963) 19

Bucks County Playhouse v. Bradshaw, 577 F. Supp. 1203 at 1208 (U.S. Dist. Ct. E.D. PA 1983) 19

Burger King Corp. v. Rudzewicz, 471 U.S. 462 (1985).

Cagle v. Lawson, 445 So. 2d 564, (Ala. 1984) 22,23

Calagaz v. Calhoun, 309 F. 2d 248, 256 (5th Cir. 1962) 18

DeSotacho, Inc. v. Valnit Industries, Inc. 350 So. 2d 447 (Ala. 1977) 20

Dillon Equities v. Palmer & Cay, Inc. 501 So. 2d 459 (Ala. 1986) 20

Hoffman v. Chandier, 431 So. 2d 499, 502, (Ala. 1983) 20

New York Times Co. v. Sullivan, 273 Ala. 656, 144 So. 2d 25 (1962), rev'd on other grounds, 376 U.S. 254 (1964) i,2,15 16,19

Partin v. Michaels Art Bronze Co., 202 F. 2d 541, 542 (3rd Cir. 1953). 19

TABLE OF CITATIONS (CONTINUED)

Case Cited: Page

United States v. U.S. District Court, Southern District of Texas, 506 F. 2d 383 (5th Cir., 1974) 25

View-All, Inc. v. United Parcel Service, 435 So. 2d 1198 (Ala. 1983) 22

Statutes Cited

28 U.S.C. §1254 5

28 U.S.C. §1332 11,25,29

28 U.S.C. §1391 11,29

28 U.S.C. §1343 (3) 5

28 U.S.C. §1651 4

42 U.S.C. §1983 14,17,25

28 U.S.C. §2106 5

Rules Cited:

Federal

Federal Rules of Civil Procedure

Rule 4 (e) 6

Rules Cited (Continued) . Page

State

Alabama Rules of Civil Procedure
Rule 4.2 (b) 7

Alabama Rules of Civil Procedure
Rule 4.2 a(2)(I) i,1,6,7,13 15,16,17 21,27

Other

Alabama Rules of the Court, 1986 Desk Copy, Rule 4.2 (b) p. 21 24

Alabama Rules of the Court, 1986 Desk Copy, Rule 4.2 a(2)(I), COMMENTS, p. 31 16

Alabama Rules of the Court, 1986 Desk Copy, Rule 4.2 a(2)(I), COMMENTS, p. 32 18

Champ Lyons "In Personam Jurisdiction in Federal Crout," p. 13 in Federal Practice Seminar, School of Law, The University of Alabama, The Alabama State Bar. 16,20

2 J. Moore, Federal Practice Para. 4.25, at 1171-73 (2d Ed 1953) 28

STATEMENT REGARDING ORAL ARGUMENT

Because of the complexitities, irregularities and numerous judicial errors made in the lower court, oral argument is requested so that the Honorable Justices can understand and ask questions.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1987

No. ___

In re Julia McCain Lampkin Asam, Ph.D., J.D.,
Petitioner and/or Appellant

APPEAL AND/OR PETITION
FOR A WRIT FOR MANDAMUS FROM THE
U.S. COURT OF APPEALS, ELEVENTH CIRCUIT

The Petitioner, Julia McCain Lampkin Asam, respectively prays for a Writ for Mandamus to direct the Hon. Sam C. Pointer, U. S. District Judge, U. S. District Court, Northern District of Alabama, Western Division, since a diversity of citizenship case to rule according to the law in the forum state, Alabama, (see Alabama Rules Civil Procedure 4.2 a (2)(I), which permits minimum contacts to the extent of the outer limits of the

federal due process of the Fifth Amendment to the United States Constitution (see New York Times Co. v. Sullivan, 273 Ala. 656, 144 So. 2d 25 (1962), rev'd on other grounds, 376 U.S. 254 (1964), (See APPENDIX A AND B for order and opinion), in which the Honorable Judge Pointer transferred the instant underlying case (now 87-6-CIV F.M. 17 (B) to the U.S. District Court, Middle District of Florida, Fort Myers Division, for lack of in personam jurisdiction. Since minimum contacts with the state of Alabama are clearly shown through correspondence, telephone conversations (admitted by Defendant Shapiro in affidavit) and a letter from Defendant Shapiro showing negotiations of a retainer contract in the State of Alabama (see APPENDIX C AND D showing letter from Robert Shapiro dated June 1, 1982 to Mrs. Julia Asam in Alabama with attached proposed retainer to represent her as attorney), in personam jurisdiction is clearly shown in this malpractice action in which Defendant Shapiro demanded

$5000 unearned money unless he would withdraw as attorney within 48 hours in §1983 action.

There is a question whether the instant case in the Supreme Court of the United States should be reviewed as an appeal since the Writ for Mandamus 87-7252 was denied by the U.S. Court of Appeals, 11th Circuit showing the U.S. Court of Appeals, 11th Circuit held that the Alabama long arm statute, Alabama Rules of Civil Procedure, Rule 4.2 a(2)(I) was invalid and was repugnant to the United States Constitution, Fifth Amendment due process because the federal court, U.S. District Court, Northern District of Alabama should have considered the law of the forum state in a diversity of citizenship case under 28 U.S.C: 1332 when minimum contacts were shown with the State of Alabama showing that the court did have in personam jurisdiction and the case should have been transferred back to the federal court in Alabama.

OPINIONS BELOW

The order dated June 10, 1987, of the United States Court of Appeals, Eleventh Cir-

cuit, denying the Writ for Mandamus (87-7252), was without an opinion. (See APPENDIX F).

On July 27, 1987, petitioner's motion for consideration of this court's order entered June 10, 1987, denying the petition for writ of Mandamus, is denied. (See APPENDIX F). Also, on July 27, 1987, petitioner's alternative motion for suggestion of in banc consideration upon rehearing of writ of mandamus was denied. (see APPENDIX F).

On January 13, 1987, the Honorable Sam C. Pointer, U.S. District Judge, U.S. District Court, Northern District of Alabama, Western Division, made an order to transfer from the federal court in Alabama to the U.S. District Court, Middle District of Florida, Fort Myers Division. (See APPENDIX A for order and see APPENDIX B for opinion.)

JURISDICTION

Under 28 U.S. §1651, the Supreme Court of the United States has authority to issue extraordinary writs.

The jurisdiction of the Supreme Court of the United States to review the final judgment order of the U.S. Court of Appeals, Eleventh Circuit, is invoked under 28 U.S.C. §1254, as appeal or Writ.

The Supreme Court of the United States has jurisdiction under 28 U.S.C. §2106.

The Supreme Court of the United States has juridiction under 42 U.S.C. §1983 and 28 U.S.C. §1343(3).

CONSTITUTIONAL PROVISIONS INVOLVED

AMENDMENT V

The Plaintiff/Petitioner's due process rights under the Fifth Amendment of the U.S. Constitution are violated when an Hon. Judge does not rule according to the law and Federal Rules of civil Procedure.

In the instant case before the Supreme Court of the United States there is a question whether the Defendant Shapiro showed any minimum contact with the state of Alabama under the due process of the Fifth Amendment to the United States Constitution as a mini-

mum contact is defined in Alabama Rules of Civil Procedure 4.2 a (2)(I) and it would be fair and reasonable for Defendant Shapiro to come into the state of Alabama in a federal court and defend since in personam jurisdiction is shown if the Honorable Judge Pointer would rule according to the law of the forum state, Alabama. (See APPENDIX E for quote of Amendment V).

RULES INVOLVED

The pertinent parts of the following rules involved in this Petition for Writ for Mandamus are discussed below.

Federal

Federal Rules of Civil Procedure, Rule 4(e)

..."Whenever a statute or rule of court of the state in which the district court is held provides (1) for service of a summons, or of a notice, or of an order in lieu of summons upon a party not an inhabitant of or found within the state, ... service may in either case be made under the circumstances and in the manner prescribed in the statute or rule."

State

Alabama Rules of Civil Procedure 4.2 (b) ...

"Service outside of this state under this rule shall include service by certified mail and delivery by a process server; and each method shall be deemed to confer in personam jurisdiction."[1]

Alabama Rules of Civil Procedure 4.2 a(2)(I)

"(I) otherwise having some minimum contacts with this state and, under the circumstances, it is fair and reasonable to require the person to come to this state to defend an action. The minimum contacts referred to in this subdivision (I) shall be deemed sufficient, notwithstanding a failure to satisfy the requirement of subdivisions (A)-(H) of this subsection (2), so long as the prosecution of the action against a person in this state is not inconsistent with the constitution of this state or the Constitution of the United States."

STATEMENT OF THE CASE

The instant underlying case no. 87-6-CIV-Ft. M. 17 (B) is a diversity of citizenship with malpractice action of the Defendant,

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1 Multiple Service made on Defendant Shapiro both federal and Alabama methods and by sheriff since Defendant Shapiro failed to return acknowledgment form of first class mail; therefore, Defendant Shapiro, also an attorney, showed bad faith by not returning the acknowledgment form for the federal method of service. Since the instant case before the Supreme Court of the United States is not a question of service but whether in personam jurisdiction, details on service are in record instead of this brief.

Robert J. Shapiro, also attorney, who made a demand of $5000 unearned money within 48 hours or he would withdraw as attorney in the underlying case number 86-3142 in the U.S. Court of Appeals, Eleventh Circuit, and said 86-3142 is about to be filed in the Supreme Court of the United States by appeal or Writ for Certiorari. Because the Defendant, Robert J. Shapiro would not release his unearned contingency fee contract until after the underlying trial when he suddenly withdrew from the case because the plaintiff was unable to produce $5000 unearned money within 48 hours or he would withdraw from the case. The Plaintiff had to be a pro se at this trial that led to the appeal case no. 86-3142 because Mr. Shapiro would not release his unearned contingency fee so that she could hire another attorney.

The Complaint was originally filed Oct. 30, 1986 in the U.S. District Court, Northern District of Alabama, Western Division and was case no. CV 86 P 2020 W.

The Defendant, Robert J. Shapiro, filed on Nov. 20, 1986, Motion to Dismiss or Alternatively to Transfer in the U.S. District Court, Northern District of Alabama, Western Division.

On Jan. 13, 1987, the Hon. Judge Pointer ordered the instant underlying case transferred to the U.S. District Court, Middle District of Florida, Fort Myers Division, and the Order was entered Jan. 13, 1987

The Respondent to the Writ for Mandamus (87-7252 in the U.S. Court of Appeals, 11th Circuit) is the Honorable Sam C. Pointer, U.S. District Judge in the U.S. District Court for the Northern District of Alabama, U.S. Courthouse, Birmingham, Alabama 35203.

The Writ for Mandamus (87-7252) which was filed in the U.S. Court of Appeals, Eleventh Circuit, was denied June 10, 1987 (see p. 3 for other details on opinions below).

The pertinent facts necessary in this brief are facts that show that minimum contacts were made by the Defendant Shapiro so that in personam jurisdiction would be with the U.S.

District Court, Northern District of Alabama, Western Division.

Defendant Shapiro admitted in his affidavit dated December 1, 1986, that he had made contacts only through letters and phone conversations (see APPENDIX H). However, Defendant Shapiro made a false statement in his affidavit dated December 1, 1986 when he wrote "...and have never transacted any business in the State of Alabama." because Defendant Shapiro wrote a letter to Julia Asam, dated June 1, 1982, in which Mr. Robert Shapiro wrote,

"Enclosed herewith is a retainer agreement for your review and signature. Since your father is going to pay for this litigation, I am asking him to sign the retainer agreement also. Prior to signing the agreement, if you or your father have any questions, please feel free to call me. (Emphasis added.)

"Please sign, date and return the photocopy of the agreement to me. Sign, date and send the original to your father for his signature. Please have him return the original in the self addressed envelope. Then I will sign it and send you a copy. (Emphasis added.)

"Also, please remit $2,000.00 for the initial payment on my retainer." (Emphasis added.)

Very truly yours,

/s/ Robert J. Shapiro" (See APPENDIX C AND D).

By Defendant Shapiro sending a letter quoted above on June 1, 1982 to Julia Asam in Alabama and enclosing a proposed retainer contract and requesting $2,000.00 for the initial payment on his retainer was transacting business in the State of Alabama by trying to negotiate a contract with a new client. Defendant Shapiro was trying to involve Dr. Asam's father who had been an Alabama resident for over 50 years. Besides the citizenship of the litigants is determined when the lawsuit is commenced in a diversity of citizenzhip case under 28 U.S.C. §1332.

The rule in venue of diversity actions under 28 U.S.C. §1391 states except as otherwise provided by law, suits founded solely on diversity may be brought only in the judicial district where all plaintiffs or all defendants reside, or in the district in which the claim arose.

The instant claim in the underlying case to the Writ of Mandamus (87-7252 in the U.S. Court of Appeals, 11th Circuit), arose in Montgomery, Alabama when Defendant Shapiro

made a demand in a letter addressed to Dr. Julia L. Asam, P.O. Box 20544, Montgomery, AL 36120, dated November 2, 1984 showing that it was stamped Montgomery, Alabama and said letter demanded $5000 retainer money or Mr. Shapiro would withdraw as attorney on November 9, 1984 (and Mr. Shapiro did withdraw on November 9, 1984) when the demand was for unearned money of $5000 within 48 hours. Therefore, Mr. Shapiro breached his contract for legal services with an Alabama resident, Julia Asam, Plaintiff (now petitioner and/or appellant in this instant case in the Supreme Court of the United States.

The Plaintiff, petitioner and/or appellant, Julia Asam, chose to file the instant underlying case in the U.S. District Court, Northern District of Alabama, Western Division, since she is a resident of Alabama in Tuscaloosa, Alabama. The case should have remained in Alabama since minimum contacts were clearly shown with the state of Alabama according

to the forum's state (Alabama) under Alabama Rules of Civil Procedure 4.2 a(2)(I).

Because purposeful transactional business was conducted in the state of Alabama by Mr. Shapiro by his minimum contacts with the state of Alabama as described above, and the underlying case (currently 87-6-CIV F.M. 17 (B) in the U.S. District Court, Middle District of Florida, Fort Myers Division, should be transferred back to the U.S. District Court for the Northern District of Alabama, Western Division, because there is NO lack of in personam jurisdiction. The Honorable Judge Sam C. Pointer, U.S. District Judge for the U.S. District Court for the Northern District of Alabama, Western Division, made an error in interpreting the forum's state law on minimum contacts under Alabama Rules of Civil Procedure 4.2 a(2)(I).

The alternative court to transfer back into a federal court in Alabama is the U.S. District Court, Middle District of Alabama because the breach of the retainer agreement between Julia

Asam and Defendant, Robert Shapiro occurred when Mr. Shapiro demanded $5000 unearned money within 48 hours or he would withdraw as attorney in the §1983 underlying action with pendent libel now known as 86-3142 (U.S. Court of Appeals, 11th Circuit number).

Summary of Facts pertinent to instant case are: Defendant Robert J. Shapiro did transact business in the state of Alabama by his admitted correspondence and telephone conversations from Florida to Alabama, and in particular the purposefully minimum contact with the state of Alabama was made when he wrote his letter dated June 1, 1982 to Julia Asam in Alabama negotiating a retainer agreement and requesting not only Julia Asam to sign the agreement but her father to sign the agreement and her father had been an Alabama resident for over 50 years. Further, Defendant Shapiro asked for $2,000.00 in the same letter which is transacting business. (See APPENDIX C AND D).

ARGUMENT AND REASONS FOR GRANTING THE APPEAL OR WRIT

I. The constitutional issue involving the outer limits of the federal due process of the Fifth Amendment to the United States Consitution was misinterpreted by the Honorable Judge Sam C. Pointer in a diversity of citizenship case involving the Standard of Sullivan, (New York Times Co. v. Sullivan, 273 Ala. 656, 144 So. 2d 25 (1962, rev'd on other grounds, 376 U.S. 254 (1964), doctrine as to the extension of Alabama's long arm jurisdiction (Alabama Rules of Civil Procedure 4.2 is Alabama long arm statute) to the outer limits of due process when the Honorable Sam C. Pointer, Jr., U.S. District Judge transferred the instant underlying case (now 87-6-CIV F.M. (b) in U.S. District Court, Middle District of Florida, Fort Myers Division) for alleged lack of in personam jurisdiction (see APPENDIX A AND B); therefore, the Honorable Judge Pointer should be directed to rule according to the law of

the forum state, Alabama, Alabama Rules of Civil Procedure, Rule 4.2 a(2)(I).

The comments on the Rule 4.2 a(2)(I) in the Alabama Rules of the Court, 1986 Desk Copy, p. 31, states,

"This subparagraph (I) is but a restatement of the current definition of the federal constitutional standard."

The Alabama Rules of Civil Procedure, Rule 4.2 a(2)(I) states,

"(I) otherwise having some minimum contacts with this state and, under the circumstances, it is fair and reasonable to require the person to come to this state to defend an action." ...

See Champ Lyons "In Personam Jurisdiction in Federal Court," p. 13 in Federal Practice Seminar, School of Law, The University of Alabama, The Alabama State Bar, which states,

"Complexities of election between state or federal law as controlling on the question of the reach of process initiated pursuant to state law under FRCP 4 are happily short-circuited by reason of Alabama's view that the reach of the Alabama "long arm" is coextensive with the outer limits of due process. New York Times Co. v. Sullivan, 273 Ala. 656, 144 So. 2d 25 (1962), rev'd on other grounds, 378 U.S. 254 (1964). Furthermore, the necessity for resort to a close analysis of Alabama's transactional bases for an attempt to assert jurisdiction over the person over a non-resident as a prelude to the application of federal standards dealing with due"

"process is also eliminated by reason of Alabama's broad phraseology in connection with assertion of jurisdiction over nonresidents. ARCP 4.2, dealing with bases and methods of service outside of the State of Alabama, delineates specific activity which lead to a prospect for legal liability, and after the delineation of various specific types of activity, concludes with a general characteration of "otherwise having some minimum contact with this state and, under the circumstances, it is fair and reasonable to require the person to come to this state to defend an action" ARCP 4.2(a)(2)(I)..."

(a) Defendant, Robert J. Shapiro, in the underlying case, in which he was an attorney in a 42 U.S.C. §1983 action with pendent libel, made minimum contacts with the state of Alabama to allow federal court (U.S. District Court for the Northern District of Alabama) to have in personam jurisdiction, i.e. Mr. Shapiro had minimum contacts with the state of Alabama through correspondence enclosing retainer contract and telephone calls from the state of Florida to the state of Alabama by calling Julia Asam in Montgomery Alabama from Florida concerning his legal representation. See APPENDIX H which is an affidavit by Defendant Shapiro admitting to

correspondence and telephone calls into the state of Alabama. See APPENDIX C AND D showing Defendant Shapiro's letter dated June 1, 1982 to Julia Asam in Alabama with enclosed proposed retainer contract and Defendant Shapiro requested $2,000 -- a definite business transaction. See Alabama Rules of the Court, 1986 Desk Copy, p. 32 which states. ..."federal cases show that transacting business in Alabama would include such factors as... correspondence with persons in Alabama (Calagaz v. Calhoun, 309 F. 2d 248, 256 (5th Cir. 1962)..." (Emphasis added.)

The Calagaz v. Calhoun, supra, case was pointed out on December 29, 1986, at the pre-trial conference to the Honorable Judge Pointer and again in the "Second Amended Motion to Strike and Response to "Motion to Dismiss or, in the Alternative, to Transfer" by Plaintiff, Julia Asam on December 30, 1986, when said amended motion was filed in the U.S. District Court, Northern District of Alabama, Western Division.

To consider the threshold issue of whether the U.S. District Court for the Northern District Court of Alabama lacks in personam

jurisdiction over defendant please consider the following cases.

See Bucks County Playhouse v. Bradshaw, 577 F. Supp. 1203 (1983), a U.S. District Court, E.D. Pennsylvania case, held that

"To determine if personal jurisdiction exists over nonresident defendant, district court must look to law of state in which it sits."

Also see Arrowsmith v. United Press International, 320 F. 2d 219, 223 (2d Cir. 1963); Partin v. Michaels Art Bronze Co. 202 F. 2d 541, 542 (3rd Cir. 1953).

The Bucks County Playhouse v. Bradshaw 577 F. Supp. 1203 at 1208 states,

"In essence, an inquiry into the personal jurisdiction of a court under the long-arm statute raises but two questions:
1) What are the contacts of the defendant with the forum state which give rise to the cause of action complained of and
2) Are these contacts constitutionally sufficient under the due process clause."

Alabama law is broader than the Pennsylvania law stated in Bucks County Playhouse v. Bradshaw, supra. The reach of the Alabama long arm is coextensive with the outer limits of due process. See New York Times Co. v. Sullivan, 273 Ala. 656, 144 So. 2d 24 (1962),

rev'd on other grounds, 376 U.S. 254 (1964). See quote from Champ Lyons "In Personam Jurisdiction in Federal Court," on p.16 of Brief.

State law is defined in Hoffman v. Chandler, 431 So. 2d 499, 502, (Ala. 1983) which states,

"(1) The term 'State law' includes all laws, decisions, rules, regulations, or other State action having the effect of law, or any State."

See Dillon Equities v. Palmer & Cay, Inc. 501 So. 2d 459 (Ala. 1986) which states,

"Physical presence in state is not prerequisite to effective service of process on nonresident defendant; what is required is that out-of-state resident have some minimum contacts with the state so that maintenance of suit does not offend traditional notions of fair play and substantial justice. Rules of Civ. Proc., Rule 4.2 (a)(2)(I); U.S.C.A. Const. Amend. 14. (Emphasis added.)

Also see DeSotacho, Inc. v. Valnit Industries, Ind. 350 So. 2d 447 (Ala. 1977) and Burger King Corp. v. Rudzewica, 471 U.S. 462 (1985).

(b) The cause of action (malpractice action in the instant underlying case -- 87-6-CIV F.M. 17 (b) in the U.S. District Court for the Middle District of Florida, Fort Myers Division) arose out of the minimum contact of correspondence from the Defendant Shapiro

to Dr. Asam in Montgomery, Alabama (See APPENDIX G) and by the Defendant Shapiro demanding $5000 unearned money or he would withdraw from the case within 48 hours since the letter was received in Alabama as evidenced by the return receipt 48 hours before Defendant Shapiro said he would withdraw as attorney unless he received $5000 and said minimum contact was a breach of contract and would justify in personam jurisdiction. (See Alabama Rules of Civil Procedure, Rule 4.2 a (2)(I).

Defendant, Robert J. Shapiro, through his correspondence dated Nov. 2, 1984 (see APPENDIX G) to Dr. Julia L. Asam, P.O. Box 20544, Montgomery, Alabama 36120 (the address of Dr. Asam while she was attending school in Montgomery, Alabama but her domicle address was 222 18th St., Apt. 2, Tuscaloosa, Alabama 35401), and said demand letter by Defendant Shapiro caused this instant malpractice action to be filed against Mr. Shapiro because in said letter Mr. Shapiro demanded $5000 within

48 hours (since the letter was not received until Nov. 7, 1984 as evidenced by the return receipt, Exhibit D of Complaint in record) or he (Mr. Shapiro) would withdraw from the underlying case by Nov. 9, 1984 (and Mr. Shapiro did in fact withdraw on Nov. 9, 1984 (See Exhibit E of Complaint in record). Therefore, Mr. Shapiro made the minimum contact with the forum state, Alabama, which gave rise to the cause of action complained of in the Complaint of this instant case.

See Cagle v.Lawson 445 So. 2d 564 (Ala. 1984), which states,

> Where there are a minimum of contacts, and cause of action arises out of the contacts, Supreme Court considers the quality and nature of activity in Alalabama in order to determine whether maintenance of the suit in Alabama will offend traditional notions of fair play and substantial justice..." See View-All, Inc. v. United Parcel Service, 435 So. 2d 1198 (Ala. 1983) that the court quoting Professor Moore, summarized the correct constitutional requirements in this area:
>
> "The first requirement is that there must be some minimum contact with the state which results from an affirmative act of defendant. But it is NOT necessary that the defendant have been in the state..." (Emphasis added.)

The plaintiff, petitioner, and/or appellant, Julia Asam, has met this first requirement that Mr. Shapiro wrote his demand letter for $5000 of unearned money after he had received over $12,000 to represent Dr. Asam (See Exhibit C of Complaint) or he, Mr. Shapiro, would withdraw from the underlying case (86-3142 in the U.S. Court of Appeals, 11th Circuit-on the way to the Supreme Court of the United States within the 90 days).

Therefore, the malpractice cause of action arose in Montgomery, Alabama when Mr. Shapiro breached the retainer contract after receiving over $12,000 when Mr. Shapiro made a demand for $5000 unearned money within 48 hours or he would withdraw as attorney from the underlying case (86-3142).

Therefore, the U.S. District Court for the Middle District of Alabama in Montgomery, Alabama is a proper court for venue since the instant malpractice action arose in Montgomery, Alabama. See Cagle v. Lawson, 445 So. 2d 564 (Ala. 1984) at 565 which states,

"But if there is a minimum of contacts, and the cause of action arises out of the contacts, it will normally be fair and reasonable to sustain jurisdiction."

It is pointed out that on p. 21 of the Alabama rules of court, 1986 Desk Copy, states,

"Service outside of this state under this rule shall include ... delivery by a process server; and ... shall be deemed to confer in personam jurisdiction. Emphasis added.)

Since Mr. Shapiro has been personally served by the sheriff of Hillsborough County, Florida, (see court file) according to Alabama law this personal service, "shall be deemed to confer IN PERSONAM jurisdiction," according to the Alabama Rules of Court, 1986 Desk Copy, Alabama Rules of Civil Procedure, Rule 4.2(b).

Therefore, the Plaintiff, Petitioner and/or Appellant, Julia Asam, has met all the elements to show that the court has in personam jurisdiction over the Defendant, Robert J. Shapiro.

II. The case should be treated like an appeal since appeal from order of judgment of the U.S. Court of Appeals, 11th Circuit denying

Writ of Mandamus 87-7252 concerning the fact that the Honorable Judge Pointer, U.S. District Judge, U.S. District Court for the Northern District of Alabama, Western Division, made an error by transferring the instant underlying case (87-6-CIV F.M. 17 (b) - a diversity of citizenship action under 28 U.S.C. §1332 malpractice action on civil rights 42 U.S.C. §1983 complaint with pendent libel, for alleged lack of in personam jurisdiction when purposeful minimum contacts were made by the Defendant, Robert J. Shapiro, with the state of Alabama through correspondence, telephone calls and retainer contract (see Argument in Question One concerning minimum contacts and see APPENDIX A AND B FOR FINAL ORDERS OF JUDGMENT from the U.S. Court of Appeals, 11th Circuit, 87-7252 Writ for Mandamus denied.

See United States v. U.S. District Court, Southern District of Texas, 506 F. 2d 383 (5th Cir., 1974), which states,

"Writ of mandamus is appropriately issued when there is usurpation of judicial power or clear abuse of discretion..."

By this appeal of the Writ of Mandamus 87-7252 from the U.S. Court of Appeals, 11th Circuit, the petitioner and/or appellant is respectively requesting the Honorable Court to review the facts and law and determine if minimum contacts were made by the Defendant Shapiro so that Alabama federal court has in personam jurisdiction and transfer the instant underlying case (87-6-CIV F.M. 17 (B) back to a federal court in Alabama, either in the U.S. District Court, Northern District of Alabama, Western Division, or the U.S. District Court, Middle District of Alabama, in Montgomery, Alabama where the malpractice action arose as discussed above.

(a) The instant underlying case should be transferred back to the federal court in Alabama (U.S. District Court, Northern District of Alabama, Western Division, or U.S. District Court, Middle District of Alabama in Montgomery) because in personam jurisdiction is shown and it would be fair and reasonable to have the Defendant, Robert J. Sha-

piro, to come into the state of Alabama, particularly since this is a malpractice action and the said attorney, Robert J. Shapiro, is practicing in the same federal court in which the case was transferred and bias has clearly been shown (see previous case filed in the Supreme Court of the United States with U.S. Court of Appeals, 11th Circuit, number 87-3184) The point is the instant case 87-7252 should be treated an appeal because by the denial of the Writ for Mandamus by the U.S. Court of Appeals, 11th Circuit held the Alabama long arm statute to be invalid and repugnant to the U.S. Constitution, in particular the due process of the 5th Amend. and the Honorable Judge Pointer should be directed to rule according to the law of the forum state Alabama in which the minimum contacts under Alabama Rules of Civil Procedure, Rule 4.2 a(2)(I) clearly shows that the federal court in Alabama has in per-

sonam jurisdiction of the Defendant, Robert J. Shapiro. See 2 J. Moore, Federal Practice, Para. 4.25, at 1171-73 (2d Ed 1953) and quoted in Comments to Alabama Rules of Civil Procedure, Rule 4.2, which states,

"The first requirement is that there must be some minimum contact with the state which results from an affirmative act of the defendant. But it is not necessary that the defendant have been in the state or that it have agents there.

"In addition to some minimum contact with the state, it must be fair and reasonable to require the defendant to come into the state and defend the action. ... If there is a minimum of contacts and the cause of action arises out of the contacts, it will normally be fair and reasonable to sustain jurisdiction."

The minimum contact in Montgomery, Alabama was made by Defendant Shapiro writing a demand letter to Dr. Asam and Mr. Shapiro demanded $5000 or unearned money with 48 hours or he would withdraw as attorney from §1983 action.

(b) A change of venue can be made because federal courts in Alabama have in personam jurisdiction and because of bias demonstrated by the federal court in Florida (see U.S. Court of Appeals, 11th Circuit case 87-3184.

Since the instant underlying case, a diversity of citizenship case under 28 U.S.C. 1332, the venue is proper under 28 U.S.C. 1391 in the U.S. District Court, Northern District of Alabama, Western Division where the plaintiff lives and the U.S. District Court, Middle of District of Alabama where the malpractice claim arose by the Defendant Shapiro demanding $5000 unearned money within 48 hours or he would withdraw as attorney in the §1983 underlying case.

CONCLUSION

The final order by the United States Court of Appeals, Eleventh Circuit, should be reviewed as an appeal and reversed by the Honorable Supreme Court of the United States because the U.S. Court of Appeals, 11th Circuit, has held by denying the Writ for Mandamus 87-7252 that the Alabama long arm statute, Rule 4.2 a(2)(I) was invalid and was repugnant to the U.S. Constitution, 5th Amendment due process and the underlying case should be transferred back to a federal court in

CONCLUSION(CONTINUED)

Alabama (U.S. District Court, Middle or Northern District of Alabama) because minimum contacts were made by the Defendant Shapiro and the federal courts in Alabama do have in personam jurisdiction. Or in the alternative, the Writ of Mandamus should be granted to direct the Hon. Sam C. Pointer, U.S. District Judge, Northern District of Alabama to rule according to the law and facts since the Defendant Shapiro clearly made minimum contacts with the state of Alabama with his purposeful correspondence, retainer contract and telephone calls and the federal courts in Alabama do have in personam jurisdiction and the underlying case now in the U.S. District Court, Middle District of Florida should be transferred back to a federal court in Alabama, especially since bias was shown in the U.S. District Court, Middle Dist. of Fla.

Dated this 3rd day of Sept., 1987.

Respectfully submitted,

Julia McCain Lampkin Asam

Julia McCain Lampkin Asam, Ph.D., J.D.
P.O. Box 1022
University, Alabama 35486

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and accurate copy of the above Jurisdictional Statement and/or Petition was sent to Honorable Sam C. Pointer, U.S. District Court, Northern District of Alabama, U.S. Courthouse, Birmingham, Alabama 35203; Clerk, U.S. District Court, Northern District of Alabama, U.S. Courthouse, Birmingham, Alabama 35203; Clerk, U.S. District Court, Middle District of Florida, U.S. Courthouse, Tampa, Florida 33602; Clerk, U.S. Court of Appeals, Eleventh Circuit, 56 Forsyth St., N.W., Atlanta, Georgia, 30303; Mr. John D. Shofi, Attorney, Marlow, Shofi, et al., 2907 Bay to Bay Blvd. Ste. 201, The Bayshore Buildings, Tampa, Florida 33629 and Mr. Robert J. Shapiro, 13822 Cherry Creek Dr., Tampa, Florida 33618 this 3rd day of Sept. 1987.

Julia McCain Lampkin Asam

Julia McCain Lampkin Asam, Ph.D., J.D.

P.O. Box 1022

University, Alabama 35486

APPENDIX

INDEX OF APPENDIX

	Page
APPENDIX A Order filed and entered Jan. 13, 1987 in U.S. District Court Northern District of Alabama in case No. CV 86-P-2020W transferring case to U.S. District Court for the Middle District of Florida, Fort Myers, Division.	1a
APPENDIX B Opinion for order granted on Jan. 13, 1987 by Hon. Sam. C. Pointer, U.S. District Judge, U.S. District Court for the Northern Dis- of Alabama.	2a
APPENDIX C Letter to Mrs. Julia Asam in Alabama from Defendant Shapiro in Florida concerning retainer contract with proposed contract enclosed. Letter was dated June 1, 1982.	11a
APPENDIX D Proposed retainer contract enclosed in the June 1, 1982 letter from Defendant Shapiro to Julia Asam in Alabama.	12a

INDEX OF APPENDIX (CONTINUED) Page

APPENDIX E Constitutional provisions and statutes involved. 14a

APPENDIX F Order filed June 10, 1987 by U.S. Court of Appeals, 11th Circuit denying Writ for Mandamus 87-7252, and order denying reconsideration or suggestion of rehearing in banc, which was dated July 27, 1987. 18a

APPENDIX G Pertient quote from letter dated Nov. 2, 1984 from Robert J. Shapiro to Dr. Julia L. Asam in Montgomery, Alabama, demanding $5000 or he would withdraw as attorney. 19a

APPENDIX H Pertinent quotes from affidavit from Robert J. Shapiro, dated Ded. 1, 1986 and in the record. 20a

APPENDIX I Notice of Appeal filed August 28, 1987 from final order of the U.S. Court of Appeal, 11th Circuit denying Writ of Mandamus 87-7252. 21a

APPENDIX A

Filed and Entered Jan. 13, 1987.

" UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF ALABAMA

Western Division

JULIA L. ASAM,

Plaintiff:

vs.

ROBERT J. SHAPIRO,

Defendant. No.CV 86-P-2020-W

ORDER

In accordance with the accompanying Memoran= dum of Opinion, this action is hereby TRANS-FERRED to the United States District Court for the Middle District of Florida, Fort Myers Division.

This the 13th dayof January, 1987.

s/Sam C. Pointer, Jr.

United States District Judge

APPENDIX B

Filed and Entered Jan. 13, 1987.

" UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF ALABAMA

Western Division

JULIA L. ASAM,

Plaintiff;

vs

ROBERT J. SHAPIRO,

Defendant, No. CV 86-P-2020-W

Memorandum of Opinion

Julia Asam has filed this action alleging that Robert Shapiro committed legal malpractice and breached his contract to provice legal services as a result of his representation of Asam in Florida. The defendant has moved to dismiss or transfer this action on the grounds that the court lacks personal jurisdiction over the defendant.

APPENDIX B (CONTINUED)

Robert Shapiro is a licensed attorney in Florida, who practices in the Tampa area. He is not licensed to practice law in Alabama, and he has never practiced law in Ala-
Affidavit of Robert Shapiro, filed December 10, 1986 ("Shapiro Affidavit"). The plaintiff, Julia Asam, retained Shapiro to represent her in a lawsuit against the Lee County Board of Education in Fort Myers, Florida. Their initial contact occurred on May 7, 1982 when Asam visited Shapiro's office in Tampa.
By a letter dated May 11, 1982, Shapiro confirmed that visit and spelled-out his proposed fee arrangement. This letter was mailed to Asam at an address in Fort Myers, Florida. As a result of their discussions, on June 9, 1982, the parties entered into a "Retainer Agreement" whereby Shapiro agreed to represent Asam under certain terms and conditions.

On June 14, 1982, Shapiro filed a complaint on behalf of Asam in the United States Dis-

APPENDIX B (CONTINUED)

trict Court for the Middle District of Florida, Fort Myers Division. Asam v. Lee County District School Board, et al.,82-91-FT-M-BK. Significantly, in that Complaint it is averred that: "Plaintiff, JULIA L. ASAM, is a ... resident of Fort Myers, Lee County, Florida."

After the date of the filing of the complaint, all of the correspondence from Shapiro to Asam, of which the court is aware, is directed to Asam at addresses in Alabama. See letters of July 7, 1982, September 17, 1984, September 24, 1984, October 8, 1984, and November 2, 1984. Shapiro also talked with her on the telephone from Florida to Alabama, Shapiro Affidavit, p. 2.

Finally, on November 2, 1984, the defendant wrote a letter to Asam in Montgomery, Alabama in which he enclosed a copy of a motion to withdraw. The letter said that he would file the motion on Friday, November 9, 1984,

APPENDIX B (CONTINUED)

unless he received $5,000.00.[1]

As preliminary matter, the court notes that "the plaintiff is entitled to every favorable inference which can be drawn from the pleadings, affidavits and exhibits." In Re Arthur Treachers Franchise Litigation, 92 F.R.D. 398, 409 (E.D. Pa. 1981), quoted in Bucks County Playhouse v. Bradshaw, 577 F. Supp. 1203, 1206 (E.D. Pa. 1983). Where an objection has been raised, however, the plaintiff has the burden of proof to demonstrate, by competent proof, that jurisdiction is proper. McNutt v. General Motors Acceptance Corp., 298 U.S. 178 (1936); Candy H. v. Redemption

---

1. He describes the $5,000.00 *as the "additional retainer which we had agreed would be payable to me upon the setting of your case for trial."

[*Not in original retainer contract, especially not to demand to be paid within 48 hours or withdraw.]

APPENDIX B (CONTINUED)

Ranch, Inc., 563 F. Supp, 505 (M.D. Ala. 1983).

In Alabama, courts may assert jurisdiction over-non resident defendants as long as the prosecution of the action is not inconsistent with the requirements of due process under the Constitution of the United States. Rule 4.2 (a)(2)(I), Alabama Rules of Civil Procedure; Cagle v. Lawson, 445 So. 2d 564 (Ala.. 1984). Thus, Alabama my assert jurisdiction over non-resident defendants if they have sufficient "minimum contacts" with Alabama such that the maintenance of the suit does not offend "traditional notions of fair play and substantial justice." Semo Aviation, Inc. v. Southeastern Airways Corp., 360 So. 2d 936, 938-39 (Ala. 1978) quoting Shaffer v. Heitner, 433 U.S. 186 (1977) and International Shoe Co. v. Washington, 326 U.S. 310 (1945).

APPENDIX B (CONTINUED)

Under minimum contacts analysis, the Supreme Court has indicated certain factors which should be considitered: (1) has the defendant purposefully availed itself of the privilege of conducting activities within the forum state; Hanson v. Denckla, 357 U.S. 235, 253 (1958); (2) did the cause of action arise from the defendant's activities within the state; McGee v. International Life Insurance Co., 355 U.S. 220 (1957); and (3) were the acts of the defendant in the forum state substantial enough to make the exercise of jurisdiction reasonable? International Shoe, 326 U.S. 310, 317 (1945). Consideration of these factors is designed to test whether the "defendant's conduct and connection with the forum state (were) such that he would reasonably anticipate being haled into court there." World-Wide Volkswagen Corp. v. Woodson, 444 U.S. 286, 297 (1980).

Regarding the first inquiry, it is evident

APPENDIX B (CONTINUED)·

that the defendant did not purposefully engage in activities within the State of Alabama. Shapiro did not solicit clients in Alabama. See Cagle v. Lawson, 445 So. 2d 564, 566 (Ala. 1984) (Where attorney solicited a client in Alabama and provided a service which involved frequent trips to Alabama and communications with his client in Alabama, attorney could anticipate jurisdiction of state's courts). In fact, Shapiro had no connection with Alabama, except that (1) Shapiro's client, Asam, moved to Alabama during the course of his representation of her in a Florida action, and (2) he communicated with Asam in Alabama through the mail and by telephone. Asam's move to Alabama is merely "the unilateral activity of [one] who claim[s] some relationship with a non-resident defendant," and not the purposeful action of the defendant. Johnston v. Basil, 802 F. 2d 418, 420 (11th Cir. 1986) quoting Burger King

APPENDIX B (CONTINUED)

Corp. v. Rudzewicz, 471 U.S. ____(1985). As to the communications from Shapiro to Asam, this court believes that sending letters or making phone calls into the forum state, by themselves, simply do not qualify as purposeful activity invoking the benefits and protection of the forum state. See Peterson v. Kennedy, 771 F. 2d 1244, 1261-62 (9th Cir., 1985); Bucks County Playhouse v. Bradshaw, 577 F, Supp. 1203, 1209 (E.D. Pa. 1983) Sporting Goods Distributors, Inc.Whitney, 498 F. Supp. 1088 (N.D. Fla. 1980); see Brooks v. Inlow, 453 So. 2d 349 (Ala. 1984).

Further, the causes of action did not arise from Shapiro's phone calls or letters to Asam in the State. Although Asam argues that the breach occurred when she received the November 2, 1984 letter, the breach occurred, if one occurred at all, when the defendant failed to do the acts he had agreed to do. See Ste-

APPENDIX B (CONTINUED)

phens v. Creel, 429 So. 2d 278, 281 (Ala. 1983); Moore v. United States Pipe and Foundry Company, 384 So. 2d 1108, 1111 (Ala. Civ. App. 1980). The defendant agreed to represent the plaintiff in an action filed in Florida. Therefore, any breach occurred in Florida.

As a result, this court concludes that Shapiro's connections with Alabama were so insubstantial that he could not have reasonably anticipated being haled into court here. Therefore, this action should be transferred to the United States District Court for the Middle District of Florida, Fort Myers Division, where the claims arose and jurisdiction is proper. A separate Order will be entered to his effect.

This the 13th day of January, 1987.

s/Sam C. Pointer Jr.

United States District Judge

APPENDIX C

Robert J. Shapiro

Attorney At Law

Tampa, Florida 33602

Admitted to the Bar

Florida and Pennsylvania

Telephone (813) 229-0378

June 1, 1982

Mrs. Julia Asam

P.O. Box 1022

University, Ala. 35486

Dear Ms. Asam:

Enclosed herewith is a retainer agreement for your review and signature. Since your father is going to pay for this litigation, I am asking him to sign the retainer agreement also. Prior to signing the agreement, if you or your father have any questions. please feel free to call me.

Please sign, date and return the photocopy of the agreement to me. Sign, date and send the original to your father for his signature. Please have him return the origi-

APPENDIX C (CONTINUED)

nal in the self addressed envelope. Then I will sign it and send you a copy.

Also, please remit $2,000.00 for the initial payment on my retainer.

Very truly yours,

s/Robert J. Shapiro

Robert J. Shapiro

RJS:kt

Enc.

APPENDIX D

The proposed retainer enclosed June 1, 1982 in the letter in Appendix C states,

" The undersigned client, JULIA LAMPKIN ASAM and her father C.B. Lampkin, Jr., [line drawn through and "and her father C.B. Lampkin Jr.,] hereby retain, ROBERT J. SHAPIRO as JULIA LAMPKIN ASAM's attorney [line drawn through as JULIA LAMPKIN ASAM'S attorney] to represent her in connection with her claim for

APPENDIX D (CONTINUED)

libel and damage to reputation against the School Board of Lee County, Florida.

...

(1) Receipt from us [her added above us] of a minimum retainer in the amount of $5000. [NOTE THIS ORIGINAL RETAINER WAS PAID AND Mr. Shapiro was paid over $12,000.00 so the alleged retainer on November 2, 1984 by Mr. Shapiro demanding $5000 or he would withdraw from the case in 48 hours is not in the original retainer contract.]

...

READ, APPROVED AND ACCEPTED.

JULIA LAMPKIN ASAM DATE

READ, APPROVED AND ACCEPTED

C.B. LAMPKIN, J.R DATE [line drawn through father's name by Mr. Shapiro]

I HEREBY ACCEPT employment upon the terms and conditions as set above.

ROBERT J. SHAPIRO, ESQ. DATE [No signatures signed since proposed retainer contract].

APPENDIX E

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

United States Constitution, Amendment V in pertinent part, as follows:

"no person shall ... be deprived of life, liberty or property, without due process of law".

28 U.S.C. §2106

"The Supreme Court of any other court of appellate jurisdiction may affirm, modify, vacate, set aside or reverse any judgment, decree, or order of a court lawfully brought before it for review, and may remand the cause and direct the entry of such appropriate judgment, decree, or order, or require such further proceedings to be had as may be just under the circumstances."

42 U.S.C. §1983

"Every person who, under color of any statute, ordinance, regulation, custom, usuage, or any State or Territory, subjects, or causes to be subjected, any citizen of the United

APPENDIX E (CONTINUED)

or any State or Territory, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities accured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress."

28 U.S.C. §1343(3)

3) To redress the deprivation, under color of any State law, statute, ordinance, regulation, custom or usuage, or any right, privilege or immunity secured by the Constitution of the United States or by any Act of Congress providing for equal rights of citizens or of all persons within the jurisdiction of the United States;"

APPENDIX E (CONTINUED)

28 U.s.C. §1651

"(a) The Supreme Court and all courts established by Act of Congress may issue all writs necessary or appropriate in aid of their respective jurisdiction and agreeable to the usuages and principles of law.

28 U.S.C. §1254

Cases in the courts of appeals may be reviewed by the Supreme Court by the following methods:

(a) By writ of certiorari granted upon the petition of any party to any civil or criminal case, before or after rendition of judgment or decree;

(2) By appeal by a party relying on a State statute held by a court of appeals to be invalid as repugnant to the Constitution, treaties or laws of the United States, but such appeal shall preclude review by writ of cer-

APPENDIX E (CONTINUED)

tiorari at the instance of such appellant, and the review on appeal shall be restricted the Federal questions presented;"

28 U.S.C. §1332

" (a) The district court shall have original jurisdiction of all civil actions where the matter in controversy exceeds the sum or value of $10,000, exclusive of interests and costs, and is between --

(1) citizens of different States;..."

28 U.S.C. §1391.

" (a) A civil action wherein jurisdiction is founded only on diversity of citizenship may, except as otherwise provided by law, be brought only in the judivial district where all plaintiffs or all defendants reside, or in which the claim arose."

APPENDIX F

Filed June 10, 1987

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 87-7252

IN RE:

JULIA L. ASAM, Ph.D.

Petitioner.

On Petition for Writ of Mandamus to the United States District Court for the Northern District of Alabama

Before: RONEY, Chief Judge, HILL and KRAVICH, Circuit Judges.

B Y T H E C O U R T:

The petition for writ of mandamus is DENIED.

APPENDIX F (CONTINUED)

Filed July 27, 1987

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 87-7252

IN RE:

APPENDIX F (CONTINUED)

JULIA L. ASAM, Ph.D.

Petitioner.

On petitioner for Writ of Mandamus to the United States District Court for the Northern District of Alabama

Before KRAVITCH, ANDERSON and EDMONDSON, Circuit Judges.

B Y T H E C O U R T:

Petitioner's motion for reconsideration of this court's order entered June 10, 1987 denying the petition for writ of mandamus, is denied.

Petitioner's alternative motion for suggestion of in banc consideration upon rehearing of writ of mandamus is denied.

APPENDIX G

Pertinent quote from letter dated Nov. 2, 1984 from Robert J. Shapiro to Dr. Julia L. Asam, P.O. Box 20544, Montgomery, AL 36120 states,

APPENDIX G (CONTINUED)

"I am enclosing a copy of a Motion to Withdraw as your attorney which I intend to file on Friday, November 9 unless I receive the $5,000.00 additional retainer..." (see Exhibit C in Complaint in record). Further, see Exhibit D in Complaint showing said letter dated Nov. 2, 1984 was received on Nov. 7, 1984, as evidenced by the certified mail return receipt; therefore, Defendant Shapiro made demand for $5000 within 48 hours or he would withdraw as attorney and did withdraw.

APPENDIX H

Pertinent quotes from affidavit from Robert J. Shapiro, dated December 1, 1986 and in the record, states,

"The only contacts I had with the plaintiff in Alabama were telephone conversations and letters that I wrote to her while she was in Alabama. I also talked to her on the telephone from Florida to Alabama. ... I do not have a residence in the State of Alabama, nor do I transact any business and have never transacted any business in the State of Alabama."

APPENDIX I

Notice of Appeal filed August 28, 1987.

" IN THE U.S. COURT OF APPEALS

ELEVENTH CIRCUIT

JULIA L. ASAM, Ph.D., J.D.

Plaintiff/Petitioner/Appellant

v.

HON. SAM C. POINTER

U.S. District Judge

Respondent/Appellee

Case no. 87-7252

NOTICE OF APPEAL

NOTICE is hereby given that Julia L. Asam, Ph.D., J.D., (Julia McCain Lampkin Asam), Plaintiff/Petitioner/ and/or Appellant, above named, hereby appeals to the Supreme Court of the United States from the order of judgment entered on June 10, 1987 by the U. S. Court of Appeals, Eleventh Circuit (see Exhibit 1 attached [Appendix F])and Motion for reconsideration of this order entered June 10, 1987 and alternative motion for suggestion

APPENDIX I (CONTINUED)

of in banc consideration upon rehearing was denied on July 27, 1987 (Exhibit 2 attached [Appendix F]).

The Supreme Court of the United States has jurisdiction under the following:

28 U.S.C. §1254

28 U.S.C. §2106

42 U.S.C. §1983 (underlying case since malpractice case under 28 U.S.C. 1332 diversity of citizenship).

28 U.S.C. §1343 (3) and

28 U.S.C. §1651 The Supreme Court of the United States has authority to issue extraordinary writs. The appeal involves the denying of a Writ for Mandamus by the U.S. Court of Appeals, Eleventh Circuit, (87-7252).

Notice of Appeal to Supreme Court of the United States from U.S. Court of Appeals, Eleventh Circuit p.2

Proof of Service attached as well as Certificate of Service.

APPENDIX I (CONTINUED)

Jurisdictional Briefs (40 copies) will be sent to the Supreme Court of the United States together with the $200 docket fee.

Respectfully submitted,

Attachments /s/ Julia McCain Lampkin Asam

Exhibits 1 and 2

Proof of Service

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and accurate copy of the above Notice of Appeal was sent to the Honorable Sam C. Pointer, U.S. District Court, Northern District of Alabama, U.S. Courthouse, Birmingham, Alabama 35203; Clerk U.S. District Court, Northern District of Alabama, U.S. Courthouse, Birmingham, Alabama 35203; Clerk, U.S. District Court, Middle District of Florida, U.S. Courthouse, Tampa, Florida 33602; Clerk, The Supreme Court of the United States, U.S. Supreme Court Building, 1 First St. N.E., Washington, D.C.

APPENDIX I (CONTINUED)

20543; Mr. John D. Shofi, Attorney, Marlow Shofi, et al., 2907 Bay to Bay Blvd. Ste. 201, The Bayshore Buildings, Tampa, Florida 33629 and Mr. Robert J. Shapiro, 13822 Creek Dr., Tampa, Florida 33618 this 27th of August 1987.

/s/Julia McCain Lampkin Asam